(26,987)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 313.

KWOCK JAN FAT, PETITIONER,

vs.

EDWARD WHITE, AS COMMISSIONER OF IMMIGRATION AT THE PORT OF SAN FRANCISCO.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

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No. 3146

United States

Circuit Court of Appeals

For the Ninth Circuit.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

Names and Addresses of Attorneys of Record.

For Petitioner and Appellant:

DION R. HOLM, Esq., San Francisco, Calif.

For Respondent and Appellee:

JOHN W. PRESTON, Esq., U. S. Attorney, and CASPER A. ORNBAUN, Esq., Asst. U. S. Attorney.

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus for and on Behalf of Her Son, KWOCK JAN FAT.

Praecipe for Transcript of Record.

To the Clerk of said Court:

Sir: Please issue certified copies of the following proceedings, etc.:

1. Petition for writ of habeas corpus with amendments thereto, omitting the copy of the testimony filed with said petition.
2. Order to show cause therein.
3. Demurrer.
4. Order sustaining demurrer, denying petition and discharging order to show cause.
5. Notice of appeal.
6. Petition for appeal.
7. Order allowing appeal.

8. Assignment of errors.
9. Stipulation and order (as to exhibits).
10. Praecipe for appeal and all minute orders of court, except those of postponement.
11. Citation on appeal, original and copy.

DION R. HOLM,
Attorney for Appellants.

[Endorsed]: Due service and receipt of a copy of the within praecipe is hereby admitted this 9th day of January, 1918.

JNO W. PRESTON,
Attorney for Appellee.

Filed Jan. 10, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [1*]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son KWOCK JAN FAT.

Petition for Writ of Habeas Corpus.

The petition of Tom Ying Shee respectfully shows:

I.

That your petitioner is a person residing at Monterey, State of California, and is the mother of

*Page-number appearing at foot of page of original certified Transcript of Record.

Kwock Jan Fat. That the said Tom Ying Shee petitions this court for a writ of habeas corpus for and on behalf of her son, Kwock Jan Fat, who is unable to apply by reason of his unlawful detention, imprisonment and restraint at Angel Island, California.

II.

That the said Kwock Jan Fat is unlawfully imprisoned, detained, confined and restrained of his liberty by Edward White, Commissioner of Immigration, who is the person who has the care, custody and control of the body of said Kwock Jan Fat, at the Immigration Station of the United States, at Angel Island, California, in this Northern District of California, and is to be deported therefrom to China.

III.

That Kwock Jan Fat was born in the city of Monterey, State [2] of California, about twenty-one years ago. The mother of Kwock Jan Fat is your petitioner, and his father Ah Tuck Lee, now deceased, was also a native of Monterey, California.

That in the year 1915 Kwock Jan Fat was desirous of making a trip to China and applied to the Immigration Authorities at Angel Island, California, that his status be investigated before he left the United States. Kwock Jan Fat then made application to Form 430, a document issued to all persons of Chinese descent who establish to the satisfaction of the Commissioner of Immigration that they are citizens of the United States. Evidence was offered in support of the claim and on

or about February 1st, 1915, Samuel Backus, as Commissioner of Immigration, at Angel Island, California, issued to said Kwock Jan Fat a Form 430. Thereafter Kwock Jan Fat sailed for China from the port of San Francisco, State of California.

On June 7, 1917, Kwock Jan Fat returned to this country and made application for admission as a returning native and presented the Form 430. Thereafter on June 9, 1917, Kwock Jan Fat was examined by an Inspector of Immigration, at Angel Island, California; on June 28, 1917, Edward White, as Commissioner of Immigration, denied Kwock Jan Fat the right to enter the country, finding in substance that the claimed nativity was not established to his satisfaction. Thereafter a petition for reconsideration of this decision and seven affidavits were filed on behalf of Kwock Jan Fat; on July 12, 1917, the Commissioner of Immigration reopened the case for the purpose of reconsidering his decision and giving the applicant an opportunity to offer further evidence. On July 17, 1917, three white witnesses from the City of Monterey, California, the place where Kwock Jan Fat was born, presented themselves at Angel Island and testified for and on behalf of [3] Kwock Jan Fat; thereafter the Commissioner of Immigration denied applicant the right to enter the United States.

IV.

On September 11, 1917, Kwock Jan Fat appealed to the Secretary of Labor, from the decision of the Commissioner of Immigration. On October 20, 1917, the Secretary of Labor confirmed the findings

and decisions of the Commissioner of Immigration at Angel Island. Applicant has exhausted all his rights and remedies before the Department of Labor.

V.

That the illegality of said imprisonment, detention, confinement and restraint of liberty consists in the following:

That the Immigration Authorities failed to record all of the testimony given by the witnesses sent to Angel Island, to testify for applicant.

That said act of failure to record all the evidence adduced is contrary to the word, meaning and spirit of Rule 5, Subdivisions a, b, and c, of the Treaty Laws and Rules Governing the Admission of Chinese to the United States, as in force and effect, and renders an appeal to the Secretary of Labor abortive as said official has not the entire record of the case before him. Said act is in contravention to the Constitution of the United States, and unfair.

VI.

That the hearing of the applicant's case was unfair and contrary to Rule 5, Subdivisions a, b, and c, of the Treaty Laws and Rules Governing the Admission of Chinese to the United States, as in force and effect, in this; That when the Immigration Authorities were gathering evidence to disprove the applicant's nativity, the Inspector of Immigration at pages 73a, **[4]** 73b of the Record of the Immigration Authorities, in a report stated, a person

had given an affidavit and statement concerning the facts in the case, but gave the affidavit and statement with the understanding that his name should not be disclosed, or the substance of his testimony. In a letter addressed to the Commissioner of Immigration, dated September 12, 1917, the attorney for Kwock Jan Fat demanded the right to inspect the affidavit and learn what the testimony was, for the purpose of putting in a counter-affidavit, if necessary, and for the further purpose of determining how far it controlled the Commissioner in making his findings.

This request was denied on September 14, 1917, That by denying counsel the right to inspect all the evidence adduced against applicant an appeal to the Secretary of Labor was abortive as counsel was unable to properly meet the issues in the case either before the Secretary of Labor or the Commissioner of Immigration.

VII.

Petitioner alleges that applicant was denied a fair hearing and he is being excluded from the United States without due process of law for the following reason, that the proper force and effect was not given to the Form 430 when presented by applicant at the time he sought to enter the United States and is in direct contravention to Rule 16 of the Treaty Laws and Rules Governing the Admission of Chinese to the United States.

VIII.

That the evidence submitted and adduced upon the hearing of Kwock Jan Fat's application for ad-

mission to the United States was of such a conclusive kind and character and of such legal weight and sufficiency that it was an abuse of discretion upon the [5] Commissioner of Immigration and the Secretary of Labor not to be guided thereby.

IX.

That your petitioner has in her possession a copy of the testimony given in this case, together with a copy of the letters addressed to the Commissioner and answers thereto, but has not a copy of the affidavit or testimony given by the undisclosed witness, nor a copy of the Inspector's report, wherein he stated that he had obtained such testimony.

That your petitioner files herewith, but under separate cover, all of the testimony, papers and documents pertaining to the said proceedings.

That your petitioner has not a copy of the proceedings of the said case which took place before the Secretary of Labor at Washington, D. C., and that there is no copy of said proceedings now within the jurisdiction of this court, but prays that when the said proceedings are available they may be made a part of this petition.

WHEREFORE, your petitioner prays that a Writ of Habeas Corpus be issued to this Honorable Court directing and commanding said Edward White, Commissioner of Immigration, at the port of San Francisco, to have and produce the body of the said Kwock Jan Fat before this Honorable Court, at the Postoffice Building, in the City and County of San Francisco, State of California, at a

day and time certain to be fixed by this Court, or to show cause if any he has, why the writ should not be granted in order that the alleged cause of imprisonment and detention of said Kwock Jan Fat may be examined into, so that if it be determined the said detention and imprisonment is unlawful and illegal, that the applicant was not given a fair hearing, that the said Kwock Jan Fat **[6]** may be discharged from the custody, detention and imprisoned. That a copy of this petition be served, together with the order as prayed for on the Commissioner of Immigration at Angel Island, California.

TOM YING SHEE,
Petitioner.

DION R. HOLM,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

Tom Ying Shee, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing petition; that the same has been read and explained to her; that she knows the contents thereof; that the same is true of her own knowledge except as to the matters therein alleged on her information and belief and as to those matters she believes them to be true.

TOM YING SHEE.

Subscribed and sworn to before me this 26th day of October, 1917.

[Seal] JULIA W. CRUM,
Notary Public, in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Oct. 26, 1917. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [7]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Amendment to Petition for a Writ of Habeas Corpus.

Comes now Tom Ying Shee, with leave of the Court first had, and files this document as an amendment to her petition for a writ of habeas corpus for and on behalf of her son, heretofore filed, and alleges:

I.

That your petitioner prays that this amendment may be considered as following the words, "to testify for applicant," line 15, page 3, paragraph 5, of her petition heretofore filed.

II.

On July 7, 1917, three white witnesses journeyed

from the city of Monterey, California, to Angel Island, California, to testify as to what they knew concerning the applicant. That each witness was given a searching examination concerning his knowledge as to the applicant and near the end of the examination the applicant was brought before each witness. That your petitioner has been informed by the three witnesses, and upon such information and belief alleges, that material, relevant and competent questions were asked by the examining inspector of the applicant and of the witnesses, in the presence of each other, and answers were given by both the [8] witnesses and the applicant, relative to the applicant's place of birth, parentage and acquaintance with each witness. That your petitioner is unable to state what questions were asked and what answers given, but on information and belief alleges, that the answers given were competent, relevant and material evidence, conclusively proving the place of nativity of the applicant and that he was the lawful son of Ah Tuck Lee, a native of California, and your petitioner Tom Ying Shee, and that he was born at Monterey, California.

TOM YING SHEE.

DION R. HOLM,
Attorney for Petitioner.

State of California,
City and County of San Francisco,—ss.

Dion R. Holm, being first duly sworn, on behalf of the petitioner, Tom Ying Shee, in the above-entitled action, deposes and says:

That he has read the foregoing Amendment to petition for a writ of habeas corpus and knows the contents thereof, and that the same is true of his own knowledge except as to the matters which are therein stated on information and belief and as to those matters that he believes them to be true.

That said petitioner, Tom Ying Shee, is absent from the City and County of San Francisco, where Dion R. Holm resides and has his office; and the facts contained in the amendment to petition for a writ of habeas corpus are within the knowledge of this affiant, who is the attorney of record for petitioner and therefore he makes this affidavit. **[9]**

DION R. HOLM.

Subscribed and sworn to before me this 5th day of December, 1917.

[Seal] J. J. KERRIGAN,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Due service and receipt of a copy of the within amendment to petition for writ of habeas corpus is hereby admitted this 5th day of December, 1917.

JNO. W. PRESTON,
U. S. Attorney,
Attorney for Respondent.

Filed Dec. 5, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. **[10]**

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

(No. 16,293.)

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Order (to Show Cause).

GOOD CAUSE APPEARING THEREFOR, and upon reading the certified petition on file herein,—

IT IS HEREBY ORDERED that Edward White, Commissioner of Immigration for the port and district of California, appear before this court on the 3d day of November, 1917, at the hour of ten o'clock of said day to show cause if any he has why a writ of habeas corpus should not be issued herein as prayed for and that a copy of this order with said writ be served upon the said commissioner.

AND IT IS FURTHER ORDERED that the said Edward White, Commissioner of Immigration aforesaid, or whoever acting under the orders of said commissioner and Secretary of Labor, shall have the custody of Kwock Jan Fat, are hereby ordered and directed to retain said Kwock Jan Fat within the custody of the said Commissioner of Immigration and within the jurisdiction of this court until further order herein.

Dated Oct. 26, 1917.

E. S. FARRINGTON,
Judge of the United States District Court.

[Endorsed]: Filed Oct. 26, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [11]

In the Southern Division of the United States District Court for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Demurrer to Petition and Amended Petition for Writ of Habeas Corpus.

Now comes the respondent, Edward White, Commissioner of Immigration at the Port of San Francisco, in the State and Northern District of California, and demurs to petition and amended petition for a writ of habeas corpus in the above-entitled cause and for grounds of demurrer alleges:

I.

That the said petition and amended petition do not state facts sufficient to entitle petitioner to the issuance of a writ of habeas corpus, or for any relief thereon.

II.

That said petition and amended petition are in-

sufficient in that the statements therein relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

WHEREFORE, respondent prays that the writ of habeas corpus be denied.

JNO. W. PRESTON,
United States Attorney,
CASPER A. ORNBAUN,
Asst. United States Attorney,
Attorneys for Respondent.

[Endorsed]: Filed Dec. 17th, 1917. W. B. Maling, Clerk. By Lyle S. Morris, Deputy. [12]

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Monday, the 17th day of December, in the year of our Lord, one thousand nine hundred and seventeen. Present: The Honorable BENJAMIN F. BLEDSOE, Judge.

No. 16,293.

In the Matter of KWOCK JAN FAT, on Habeas Corpus.

Minutes of Court—December 17, 1917—Order Sustaining Demurrer and Discharging Order to Show Cause.

This matter came on regularly this day for hearing on order to show cause as to the issuance of a

writ herein. Dion R. Holm, Esq., was present as attorney for petitioner and detained. C. A. Ornbaun, Esq., Assistant United States Attorney, was present for and on behalf of respondent. Thereupon, Mr. Ornbaun presented demurrer to petition, which was filed, and also presented Immigration Records, which were filed and marked Respondent's Exhibits "A" and "B," and which are to be considered as part of original petition. The matter was then argued and submitted, and after due consideration had thereon, the Court further ordered that said demurrer be sustained, and that order to show cause be discharged accordingly. [13]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Notice of Appeal.

To the Clerk of the above-entitled court, and the Honorable JOHN W. PRESTON, United States Attorney for the Northern District of California.

You and each of you will please take notice that Kwock Jan Fat, the detained herein, by Tom Ying Shee, his mother, the petitioner herein, do hereby ap-

peal to the Circuit Court of Appeals of the United States for the Ninth Circuit, from the order made and entered herein on the 17th day of December, 1917, sustaining the demurrer, discharging the order to show cause and denying the petition for a writ of habeas corpus filed herein.

Dated: San Francisco, California, December 19th, 1917.

DION R. HOLM,
Attorney for Petitioner, Detained Appellants herein.

[Endorsed]: Due service and receipt of a copy of the within notice of appeal is hereby admitted this 19th day of December, 1917.

JNO. W. PRESTON.

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk [14]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Petition for Appeal.

Comes now Kwock Jan Fat, the detained, by Tom Ying Shee, the petitioner, who are the appellants herein, and says:

That on the 17th day of December, 1917, the above-entitled court made and entered its order denying the petition for a writ of habeas corpus as prayed for and filed herein, sustaining a demurrer thereto and discharging an order to show cause, in which said order certain errors are made to the prejudice of the appellants herein, all of which will more fully appear from the assignment of errors filed herein.

WHEREFORE, these appellants pray that an appeal may be granted in their behalf to the Circuit Court of Appeals of the United States for the Ninth Circuit, for the correction of the errors so complained of, and further that the transcript of the record, proceedings and papers in the above-entitled cause, as shown by the praecipe, may be sent and transmitted to the Circuit Court of Appeals for the Ninth Circuit, under the rules of said court in accordance with the law in such case, made and provided, and that all further proceedings in this matter be stayed until the final determination of said appeal.
[15]

Appellants further pray that during the pendency of the said appeal that Kwock Jan Fat may be granted his liberty and remain at large, upon a bond in the sum of One Thousand Dollars, or any other sum the Court may name, conditioned that he remain within the United States and renders himself in

execution of whatever judgment is finally entered therein.

That in passing upon this petition for bail, the appellants desire to call the Court's attention to the fact that Kwock Jan Fat holds a very substantial interest in that certain Fish Cannery, known as the Bayside Fish Company, at Monterey, California. That the said concern is at present canning all sorts and kinds of Fish and that the output of their factory is greatly in demand, and that the prospects are that the Government of the United States will desire all the output of this concern for the feeding of her soldiers. That there is a decided shortage of labor, which greatly retards the work and if Kwock Jan Fat is permitted to land on bail he will be an aid in facilitating the work required to be done.

Dated: San Francisco, California, December 18th, 1917.

DION R. HOLM,
Attorney for Petitioner, Detained and Appellants.

[Endorsed]: Due service and receipt of a copy of the within petition for appeal is hereby admitted this 19th day of December, 1917.

JNO. W. PRESTON.

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [16]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Assignment of Errors.

Now comes Kwock Jan Fat, the detained herein, by Tom Ying Shee, his mother, the petitioner herein, both of whom are appellants herein, by their attorney, Dion R. Holm, and files the following Assignment of Errors upon which they will rely in the prosecution of their appeal in the above-entitled cause, in the United States Circuit Court of Appeals for the Ninth Circuit, from the order and judgment made by this Honorable Court on the 17th day of December, A. D. 1917.

I.

That the Court erred in denying the petition for a writ of habeas corpus.

II.

That the Court erred in sustaining the demurrer to the petition for a writ of habeas corpus.

III.

That the Court erred in discharging the order to show cause why a writ of habeas corpus should not issue.

IV.

That the Court erred in holding that the failure of the [17] immigration authorities to record and transcribe all of the testimony offered on behalf of Kwock Jan Fat was not an unfair act on the part of the Immigration Officials at Angel Island, and that such failure to record the testimony did not constitute an unfair hearing.

V.

That the Court erred in holding that the Secretary of Labor on appeal did not act unfairly when he failed to order the immigration authorities at Angel Island to transcribe the testimony adduced, when the applicant was confronted by three white witnesses at Angel Island, in the presence of the Examining Inspector, who asked questions concerning the nativity of Kwock Jan Fat and the answers given by both Kwock Jan Fat and by the witnesses.

VI.

That the Court erred in finding that it was not error on the part of the Commissioner of Immigration at Angel Island, and the Secretary of Labor, at Washington, to withhold an affidavit and testimony referred to on page 73a and 73b of the immigration record, also the witness' name from the applicant and the applicant's attorney.

VII.

That the Court erred in finding that it was not an unfair proceeding on the part of the Commissioner of Immigration at Angel Island, in disregarding the Form 430 heretofore issued to the applicant.

VIII.

That the Court erred in holding that the Commissioner of Immigration and the Secretary of Labor granted the applicant, Kwock Jan Fat, a fair hearing and that he was not excluded from the United States without due process of law. [18]

WHEREFORE, because of the many manifest errors committed by the said Court, the appellants, through their attorney, pray that the said judgment sustaining the demurrer to the petition for the writ of habeas corpus, discharging the order to show cause, and denying the writ of habeas corpus, be reversed, and for such other and further relief as to the Court may *think* meet and proper.

Dated: December 19th, 1917.

DION R. HOLM,
Attorney for Appellants.

[Endorsed]: Due service and receipt of a copy of the within assignment of errors is hereby admitted this 19th day of December, 1917.

JNO. W. PRESTON.

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [19]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son, KWOCK JAN FAT.

Order Allowing Appeal.

On motion of Dion R. Holm, attorney for Tom Ying Shee, the mother and petitioner in the above-entitled cause, and for Kwock Jan Fat, the applicant,—

IT IS HEREBY ORDERED, that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an order and judgment heretofore made and entered herein, sustaining the demurrer to the petition for a writ of habeas corpus, discharging the order to show cause, and denying the petition for a writ of habeas corpus, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, in the manner and time prescribed by law, and that meanwhile all further proceedings in this court and by the immigration authorities be suspended, stayed and superseded until the determination of said appeal.

Dated: December 19, 1917.

BLEDSOE,
Judge of the District Court of the United States, assigned to the Northern District of California.

[Endorsed]: Due service and receipt of a copy of the within order is hereby admitted this 19th day of December, 1917.

JNO. W. PRESTON,
Attorney for Appellee.

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [20]

(Citation on Appeal—Copy.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and to JOHN W. PRESTON, Esq., U. S. Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the clerk's office of the United States District Court for the Northern District of California, Southern Division, No. 1, wherein Kwock Jan Fat and Tom Ying Shee are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal

mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable B. F. BLEDSOE, United States District Judge for the Northern District of California, this 19th day of December, A. D. 1917.

BENJAMIN F. BLEDSOE,
United States District Judge, Assigned to Northern District of California.

[Endorsed]: Service of the within Citation by copy admitted this 19th day of Dec., 1917.

JNO. W. PRESTON,
Attorney for Appellee.

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [21]

At a stated term of the District Court of the United States, for the Northern District of California, held at the courtroom thereof, in the city and county of San Francisco, State of California, on Saturday, the 5th day of January, in the year of our Lord, one thousand nine hundred and eighteen. Present: The Honorable OSCAR A. TRIPPET, Judge.

No. 16,293.

In the Matter of KWOCK JAN FAT on Habeas Corpus.

Minutes of Court—January 5, 1918—Order Fixing Amount of Bail Bond.

This cause came on regularly this day for hearing on application of detained for bail. After hearing attorneys for respective parties, the Court ordered that said application be granted, and that the detained be released from present custody upon giving and filing a bond in the sum of Ten Thousand ($10,000.00) Dollars. [22]

In the Southern Division, District Court of the United States for the Northern District of California, Division Number One.

No. 16,293.

In the Matter of KWOCK JAN FAT on Habeas Corpus.

Bond Pending Determination of Writ.

National Surety Company 813 R/383151.

KNOW ALL MEN BY THESE PRESENTS, that we, Kwock Jan Fat as principal and the National Surety Company, a surety corporation of the State of New York having its principal place of business at the city of New York, State of New York, authorized to become sole surety under Acts of Congress and licensed by the State of California, as sole surety, are held and firmly bound unto the United States of America, in the full and just sum of Ten Thousand Dollars ($10,000), to be paid to the said United States of America, its attorneys, executors,

administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 9th day of January, A. D. 1918.

WHEREAS, lately at a District Court of the United States, Southern Division, Northern District of California, First Division thereof, in a matter pending in said court in which a writ of habeas corpus was applied for by Kwock Jan Fat, and an order to show cause why the writ of habeas corpus should not be granted was made by said court returnable Saturday, November 3, 1917, at 10 A. M., directing Edward White, Commissioner of Immigration at the [23] port of San Francisco, to show cause why said writ should not issue as prayed, and the Court having made and entered its order sustaining the demurrer to the writ and denying the writ, and subsequently, the said Court having made its order allowing an appeal from the said order, and having made and entered its order permitting the release of the said Kwock Jan Fat from custody during the pendency of the determination of said matter upon giving a good and sufficient bond in the sum of TEN THOUSAND DOLLARS ($10,000) and,

NOW, THEREFORE, if the said Kwock Jan Fat shall personally appear at the District Court of the United States, Southern Division, Northern District of California, at any time or times he may be required to answer and render himself amenable to any and all lawful orders and process in the premises and not depart from said court without leave first obtained, and if remanded into the custody of

the said Commissioner of Immigration will render himself in execution thereof, then this obligation to be void; otherwise to remain in full force and virtue.

KWONG JAN FAT. (Seal)
NATIONAL SURETY COMPANY.
By C. T. HUGHES, (Seal)
Its Attorney in Fact.

Taken and acknowledged before me this 9th day of January, 1918.

FRANCIS KRULL, (Seal)
United States Commissioner for the Northern District of California at San Francisco.

[Endorsed]: Filed Jan. 10, 1918. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. **[24]**

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 16,293.

In the Matter of the Application of TOM YING SHEE, for a Writ of Habeas Corpus, for and on Behalf of Her Son KWOCK JAN FAT.

Stipulation and Order Directing Transmission of Original Exhibits to Appellate Court.

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties in the above-entitled cause that the original record of the Bureau of Immigration, which was filed in the above-entitled court as respondent's exhibit, may be

transferred in its original form and without being transcribed, in the United States Circuit Court of Appeals for the Ninth Circuit, and the same is and may there be considered part of the record in determining this cause on appeal to the said United States Circuit Court of Appeals for the Ninth Circuit without objection on the part of either of said respective parties.

AND IT IS FURTHER STIPULATED that the testimony attached to the petition for a writ of habeas corpus need not be transcribed, as same is contained in the original record of the Bureau of Immigration.

Dated December 19, 1917.

JNO. W. PRESTON,
United States District Attorney.
CASPER A. ORNBAUN,
Asst. United States District Attorney.
DION R. HOLM,
Attorney for Appellants. [25]

IT IS HEREBY ORDERED that the terms of the above stipulation be complied with.

BLEDSOE,
Judge of the United States District Court, Assigned to the Northern District of California.

[Endorsed]: Due service and receipt of a copy of the within stipulation and order is hereby admitted this 19th day of December, 1917.

JNO. W. PRESTON,

Filed Dec. 19, 1917. W. B. Maling, Clerk. By C. M. Taylor, Deputy Clerk. [26]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 26 pages, numbered from 1 to 26, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the Matter of Kwock Jan Fat, on Habeas Corpus, No. 16,293, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with Praecipe for Transcript of Record (copy of which is embodied in this transcript), and the instructions of the attorney for petitioner and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Nine Dollars and Ninety-five Cents ($9.95), and that the same has been paid to me by the attorney for the appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein (page 28).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 25th day of April, A. D. 1918.

[Seal] WALTER B. MALING,
Clerk.
By C. M. Taylor,
Deputy Clerk. [27]

(Citation on Appeal—Original.)

UNITED STATES OF AMERICA,—ss.

The President of the United States, to EDWARD WHITE, Commissioner of Immigration, Port of San Francisco, and to JOHN W. PRESTON, Esq., U. S. Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, No. 1, wherein Kwock Jan Fat and Tom Ying Shee are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable B. F. BLEDSOE, United States District Judge for the Northern District of California, this 19th day of December, A. D. 1917.

BENJAMIN F. BLEDSOE,
United States District Judge, Assigned to Northern District of California. **[28]**

Service of the within citation by copy admitted this 19th day of Dec., 1917.

JNO. W. PRESTON,
Attorney for Appellee.

[Endorsed]: No. 16,293. United States District Court for the Northern District of California. Kwock Jan Fat by His Mother Tom Ying Shee, Appellants, vs. Edward White, Commissioner of Immigration. Citation on Appeal. Filed Dec. 19, 1917. W. B. Maling Clerk. By C. M. Taylor, Deputy Clerk.

[Endorsed]: No. 3146. United States Circuit Court of Appeals for the Ninth Circuit. Kwock Jan Fat and Tom Ying Shee, Appellants, vs. Edward White, as Commissioner of Immigration at the Port of San Francisco, Appellee. Transcript of the Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed April 25, 1918.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

[Endorsed]: Printed Transcript of Record. Filed July 1, 1918. F. D. Monckton, Clerk.

No. 3146

United States

Circuit Court of Appeals

For the Ninth Circuit.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the twenty-first day of October, in the year of our Lord one thousand nine hundred and eighteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner, etc.,
Appellee.

Order of Submission.

ORDERED appeal in the above-entitled case argued by Mr. Dion R. Holm, counsel for the appellants, Mr. Frank M. Silva, Assistant United States Attorney, and counsel for the appellee, submitting the case on brief on behalf of the appellee, and submitted to the Court for consideration and decision.

At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Monday, the sixth day of January, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM H. HUNT, Circuit Judge, Presiding; The Honorable WILLIAM C. VAN FLEET, District Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN JUDGMENTS AND DECREES.

By direction of the Honorable William B. Gilbert, Erskine M. Ross and William H. Hunt, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a Judgment or Decree be filed and recorded in the minutes of this court in each of the said causes in accordance with the opinion filed therein: * * * Kwock Jan Fat et al., Appellants, vs. Edward White, Commissioner, etc., Appellee. No. 3146.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, Commissioner of Immigration for the Port of San Francisco,
Appellee.

Opinion U. S. Circuit Court of Appeals.

DION R. HOLM, for the Appellants.

ANNETTE ABBOTT ADAMS, United States Attorney, and C. F. TRAMUTOLO, Assistant United States Attorney, for the Appellee.

Before GILBERT, ROSS, and HUNT, Circuit Judges.

GILBERT, Circuit Judge:

On June 20, 1915, the appellant Kwock Jan Fat, on application to the Commissioner of Immigration for the Port of San Francisco secured a pre-investigation of his status as an American citizen, he being about to depart for China. He claimed to be a son of Tuck Lee, who was born at Monterey, California. On June 7, 1917, he returned to the United States at the Port of San Francisco, and upon testimony taken and a hearing had he was denied admission on the ground that he was not the son of Tuck Lee, and was not an American citizen, but that his true name was Leu Suey Chong. On appeal to the Sec-

retary of Labor the decision was affirmed. Application was made to the court below for a writ of habeas corpus, the petition alleging that the hearing before the Commissioner was unfair in that in the record of the testimony taken no mention was made of the fact that three white witnesses for the applicant, Michaelis, Pugh and Ortings, when confronted by the applicant recognized him, and were recognized by him, and in the further fact that in the report of Wilkinson, Immigrant Inspector, to the Commissioner, the Inspector stated that he had interviewed a person who desired that his identity be not disclosed but who had given important information against the applicant concerning the issue whether or not the latter was the son of Tuck Lee. The Court below denied the writ, and the questions so presented are brought to this Court by appeal.

The fact that when the applicant was confronted by three of the witnesses who were brought from Monterey to testify that he was the son of Tuck Lee there was mutual recognition was an important circumstance and should properly have been noted in the record of the testimony. It appears, however, that when the attention of the Commissioner was directed to that omission, he wrote the applicant's counsel stating that the witnesses when confronted with the appellant immediately recognized and identified him as the person whom they knew as Quock Jan Fat, and that the appellant was equally prompt in his recognition of said witnesses, and adding: "While I was advised of this incident and gave it

full consideration in arriving at my decision, it was not made of record in connection with the statements taken from the witnesses. Copy of this letter will be placed with the record, however, and the fact that there was mutual recognition between said witnesses and the applicant will thus be available for the consideration of the Secretary upon appeal." The record shows that this letter was brought to the attention of the Secretary on the appeal. This was clearly sufficient to give the applicant the advantage of the facts.

A more serious question is raised by the allegation that evidence was considered by the appellee which counsel for the appellant was not permitted to see. Wilkinson, Immigration Inspector, was sent to Monterey to investigate the case. He interviewed a person who gave evidence only with the understanding that his name was to be kept secret. The inspector's report states: "This witness was intimately associated with the inhabitants of Chinatown of Pacific Grove, especially during the year 1902, and had occasion to visit the home of the applicant's alleged mother almost nightly during that year, under which circumstances said witness was in a position to have absolute knowledge as to the number and identity of the members of that family. While the witness was well acquainted with the applicant's three alleged sisters and knew their names and present whereabouts, it was stated most positively by the witness that there were no boys born to Tong Shee (applicant's alleged mother). Said witness was unable to identify the photographs of

either Leu Suey Chong (the boy who was admitted at this port as the son of a merchant in 1909) or the photograph of the applicant (as it appears on his return certificate or in the group photographs of the Oakland class) as anyone whom the witness had ever seen. As the applicant would have been about six years of age during the year of this witness' activity (1902), the above failure to recognize his photograph is very significant. After my first interview—on the afternoon of the 4th inst.—this witness inquired of an old Chinese resident of Pacific Grove and Monterey concerning the sons of Tuck Lee (applicant's alleged father), whereupon said Chinese stated that Tuck Lee had no sons and that the witness should have nothing to do with the case and should sign no affidavits in their behalf; that such action would involve the witness in trouble. * * * The above-mentioned witness was thoroughly conversant with the history of this family, and advised me concerning the daughter Quock Ah Oy, whose whereabouts is now unknown." Counsel for the applicant demanded the right to see the affidavit of this undisclosed witness and was informed that no affidavit or record of the testimony of such witness was secured, that there was no evidence considered by the appellee in arriving at his decision in the case "which you have not been permitted to inspect," and that that portion of the Inspector's report which was withheld contained nothing which was material to the issue. "As a matter of fact," wrote the appellee, "this inspector's report in no way influenced my decision." It is not true that the

inspector's report contained nothing which was material to the issue. On the contrary, it was directly *in point*. In Chew Hong Quong v. White, 249 Fed. 869, we held that where the immigration authorities received and acted upon a confidential communication, the source and contents of which they did not disclose to the applicant or his attorneys, so as to allow any rebuttal, and which communication was forwarded to the Department of Labor for its consideration, the hearing was unfair. But this is not such a case. Here it appears that the communication was not considered or relied upon. It should not be held that the mere receipt of an anonymous communication which is not made the basis of the Commissioner's decision, and does not influence it, renders the hearing unfair.

The judgment is affirmed.

[Endorsed]: Opinion. Filed Jan. 6, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Southern Division of the District Court of the United States for the Northern District of California, First Division.

This cause came on to be heard on the Transcript of the Record from the Southern Division of the District Court of the United States for the Northern District of California, First Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the judgment of the said District Court in this cause be, and hereby is, affirmed.

[Endorsed]: Decree. Filed and Entered January 6, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the tenth day of February, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3146.

KWOCK JAN FAT et al.,

Appellants,

vs.

EDWARD WHITE, etc.,

Appellee.

Order Denying Petition for Rehearing.

On consideration thereof, and by direction of the Honorable William B. Gilbert, Erskine M. Ross and William H. Hunt, Circuit Judges, before whom the case was heard, it is ORDERED that the petition, filed February 4, 1919, on behalf of the appellants for a rehearing of the above-entitled cause be, and hereby is, denied.

At a stated term, to wit, the October Term, A. D. 1918, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Friday, the fourteenth day of February, in the year of our Lord one thousand nine hundred and nineteen. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable WILLIAM H. HUNT, Circuit Judge.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

Order Staying Issuance of Mandate.

Upon motion of Mr. Dion R. Holm, counsel for the appellants, and good cause therefor appearing, it is ORDERED that the issuance of the mandate under Rule 32 of this Court in the above-entitled cause be, and is hereby, stayed until the petition to be made on behalf of the said appellants to the Supreme Court of the United States for the issuance of a writ of certiorari herein be disposed of, on condition that the said petition be filed and docketed in the said Supreme Court within thirty (30) days from date, and submitted agreeably to the provisions of subdivision 4 of Rule 37 of the rules of the said Supreme Court.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Appellee.

To the Clerk of the said Court:

Sir: Please make and furnish me with a certified printed Transcript of the Record (including the proceedings had in said Circuit Court of Appeals), and not less than nine uncertified copies thereof, for use on an application to be made to the Supreme Court of the United States for the issuance of a writ of certiorari under Section 240 of the Judicial Code, in the above-entitled cause, the said Transcript to consist of a copy of the following:

1. Printed Transcript of Record on which the cause was heard in said Circuit Court of Appeals, to which will be added a printed copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz.:

2. Order of Submission, entered October 21, 1918.

3. Order Directing Filing of Opinion, entered Jan. 6, 1919.

4. Opinion, filed Jan. 6, 1919.

5. Decree, filed and entered Jan. 6, 1919.

6. Order Denying Petition for Rehearing, entered Feb. 10, 1919.

7. Order Staying Issuance of Mandate, entered Feb. 14, 1919.

8. Praecipe for Transcript of Record.

9. Certificate of Clerk U. S. Circuit Court of Appeals to said Transcript.

DION R. HOLM,
Counsel for the Appellants.

Service of a copy of the within praecipe is hereby admitted this 17th day of February, A. D. 1919.

ANNETTE ABBOTT ADAMS,
Per C. F. T.,
Counsel for the Appellee.

[Endorsed]: Praecipe for Transcript of Record. Filed Feb. 17, 1919. F. D. Monckton, Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, Commissioner of Immigration for the Port of San Francisco,
Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Record Certified Under Section 3 of Rule 37 of the Rules of the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing forty-six (46) pages, numbered from and including 1 to and including 46, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to praecipe of counsel for the appellants, filed on the 17th day of February, A. D. 1919, and certified under section 3 of Rule 37 of the rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

ATTEST my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 20th day of February, A. D. 1919.

[Seal] F. D. MONCKTON,
Clerk.

By Paul P. O'Brien,
Deputy Clerk.

UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Kwock Jan Fat and Tom Ying Shee are appellants, and Edward White, as Commissioner of Immigration at the Port of San Francisco, is appellee, No. 3146, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Northern District of California, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the first day of April, in the year of our Lord one thousand nine hundred and nineteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] No. 3146. United States Circuit Court of Appeals for the Ninth Circuit. Filed April 25, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

[Endorsed:] File No. 26,987. Supreme Court of the United States, No. 901, October Term, 1918. Kwock Jan Fat vs. Edward White, as Commissioner of Immigration, etc. Duplicate Writ of Certiorari.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

Supreme Court No. 901.

KWOCK JAN FAT and TOM YING SHEE, Petitioners,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, Respondent.

Stipulation as to Return to Writ of Certiorari.

It is hereby stipulated and agreed by and between the attorneys of record, in the above entitled cause, that the Certified Transcript of Record now on file in the Supreme Court of the United States, in the case of Kwock Jan Fat and Tom Ying Shee, Petitioners, versus Edward White, as Commissioner of Immigration at the Port of San Francisco, Respondent, No. 901 October term, 1918, of said Supreme Court, shall stand as the Return, of the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, to the Writ of Certiorari issued out of said Supreme Court on the 1st day of April, 1919.

It is further stipulated and agreed that Respondent's Exhibits "A" and "B," which constitute the proceedings had before the Commissioner of Immigration at the Port of San Francisco, be forwarded in their original form, to the Supreme Court, as the cost of printing the same, owing to the length of the Exhibits, would work a hardship on Petitioners.

Dated San Francisco, April 24, 1919.

(Sgd.) ANNETTE ABBOTT ADAMS,
United States District Attorney;

(Sgd.) C. F. TRAMUTOLO,
Asst. United States Dist. Attorney,
Attorneys for Respondent.

(Sgd.) DION R. HOLM,
Attorney for Petitioners.

(Endorsed:) Stipulation as to return to writ of certiorari. Filed April 25, 1919. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE, Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Stipulation as to Return to Writ of Certiorari and Order from the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the preceding page, to be a full, true and correct copy of a "Stipulation as to Return to Writ of Certiorari" filed in the above-entitled cause on the 25th day of April A. D. 1919, as the original thereof remains on file and appears of record in my office.

Attest my hand and the Seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 25th day of April, A. D. 1919.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk,
By PAUL P. O'BRIEN,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3146.

KWOCK JAN FAT and TOM YING SHEE, Appellants,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco, Appellee.

Return to Writ of Certiorari.

By direction of the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, I, Frank D. Monckton, as Clerk of said Court, in obedience to the annexed writ of certiorari, issued out of the Honorable the Supreme Court of the United States and addressed to the Honorable the Judges of the United States Circuit Court of Appeals for the Ninth Circuit, commanding them to send, without delay, to the said Supreme Court the record and proceedings in the above-entitled cause, do attach to the said writ a certified copy of:

(1) Stipulation as to Return to Writ of Certiorari, the original of which said Stipulation was filed in said cause on this 25th day of April, A. D. 1919; and

(2) Respondent's Original Exhibits "A" and "B," filed in the above-entitled cause on the 25th day of April, A. D. 1918,

and in accordance with said stipulation, do hereby send the certified copy thereof, together with the original exhibits, to the said Supreme Court as the Return to the said Writ of Certiorari.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco,

in the State of California, this 25th day of April, A. D. 1919.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

By PAUL P. O'BRIEN,
Deputy Clerk.

[Endorsed:] File No. 26,987. Supreme Court U. S. October Term, 1918. Term No. 901. Kwock Jan Fat, Petitioner, vs. Edward White, as Commissioner of Immigration, etc. Writ of certiorari and return. Filed May 5, 1919.

MAR 5 1919
JAMES D. MAHER,
CLERK.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1918

No. 901318

KWOCK JAN FAT and TOM YING SHEE,
Petitioners,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

RALSTON & HOTT,
Evans Building, Washington, D. C.,
Attorneys for Petitioners.

DION R. HOLM,
602 California Street, San Francisco,
Of Counsel.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1918

No.

KWOCK JAN FAT and TOM YING SHEE,
Petitioners,

vs.

EDWARD WHITE, as Commissioner of Immigration at the Port of San Francisco,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Ninth Circuit.

To the Honorable Edward Douglass White, Chief Justice, and the Associate Justices of the Supreme Court of the United States:

This verified petition of Kwock Jan Fat for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, respectfully alleges that:

Kwock Jan Fat was born in Monterey County, California, somewhat over twenty-one years ago. Ah Tuck Lee was his father who was well known, throughout Monterey County, as a native born Chinese of Carmel, a settlement near Monterey.

Ah Tuck Lee, in the year 1882, married Tom Ying Shee, who was born in China and arrived in the United States when about eight years of age. To Tom Ying Shee and Ah Tuck Lee five children were born, three girls and two boys. Kwock Jan Fat being the youngest.

Ah Tuck Lee died at the city of Monterey in the year 1908.

During the early part of 1915 Kwock Jan Fat was desirous of making a trip to China and after an investigation was made by the Immigration Authorities he had issued to him a form 430 on February 1, 1915. This form designated Kwock Jan Fat as a native of California and was given him after he had assumed the burden of proof establishing to the entire satisfaction of the Immigration Authorities that he was in fact a native.

A trip was made to China and on June 7, 1917, he returned to this country and presented the form 430 but was denied the right of admission by Edward White, respondent, acting as Commissioner of Immigration at the port of San Francisco.

The usual ten days were granted Kwock Jan Fat to produce any and all testimony he might have to prove that he was a native. He was to

produce this testimony although incarcerated at Angel Island. Affidavits were offered of Judge Ernest Michaelis, W. E. Parker, Manuel Ortins and Joseph Pugh, four old residents of Monterey. The named witnesses, in their affidavits, set forth that they knew Ah Tuck Lee and remembered Kwock Jan Fat from infancy knowing him to be a native of Monterey.

Affidavits were also introduced of an elder brother, named Kwock Jan Sing, one by the mother Tom Ying Shee and one by an aunt Joe Ng Moy who attended Tom Ying Shee at the birth of Kwock Jan Fat at Monterey. The offering of affidavits is the approved method of introducing testimony in Chinese immigration cases.

Thereafter three of the above named white witnesses journeyed from Monterey to Angel Island to testify, in behalf of Kwock Jan Fat, thereby losing at least two days of business, at great personal inconvenience and considerable expense.

Edward White as Commissioner of Immigration denied Kwock Jan Fat the right of admission. An appeal was taken to the Secretary of Labor and the case submitted on a brief. The Secretary of Labor sustained the finding of the Commissioner.

A petition for a writ of habeas corpus was filed in the Southern Division of the United States District Court in and for the Northern District of California. A demurrer was interposed to this petition which was sustained by United States District

Judge Bledsoe. An appeal, from the orders of Judge Bledsoe sustaining demurrer and discharging the order to show cause, was taken to the United States Circuit Court of Appeals for the Ninth Circuit, which court affirmed the decision of the lower court.

On the 17th day of July, 1917, Joseph Pugh presented himself at Angel Island, the immigration station for the port of San Francisco, to testify as to the place of nativity of Kwock Jan Fat. After the Examining Inspector, acting for respondent, had asked innumerable questions, Kwock Jan Fat was brought into the room, where the examination was being held, and was confronted by Joseph Pugh whom he immediately recognized. Questions were then asked of the witness and Kwock Jan Fat concerning the place of birth of the latter, where both became acquainted and other matters now unknown to your petitioner, but believed by him to have been material and of great importance to his case. The Examining Inspector failed to have recorded the fact of mutual recognition or the questions and answers asked and given.

On the following day, the 18th of July, 1917, Kwock Jan Fat was brought before Judge Ernest Michaelis and Manuel Ortins, both of whom had journeyed from Monterey to Angel Island to testify as to the nativity of your petitioner. Mutual recognition resulted in both cases and then material questions were asked by the Examining Inspector and material answers were given by Kwock Jan Fat

and the witnesses. Again the Immigration Inspector failed to have either the fact of recognition, the questions or answers recorded.

On August 18th, 1917, W. H. Wilkinson, an Immigration Inspector, acting for respondent, was detailed to Monterey to investigate the case. While in Monterey the inspector did not interview, one witness who had signed an affidavit in behalf of Kwock Jan Fat.

Inspector Wilkinson did interview a person who gave evidence only with the understanding that his name was to be kept secret. The testimony of this witness was the subject of a lengthy report by Inspector Wilkinson and contained a full recital not only of all that was said by the witness but also the result of an interview this witness had with another person. Respondent refused to divulge the names of either persons although the statement was made part of the record and forwarded to the Secretary of Labor on appeal.

Despite the convincing testimony of persons other than Chinese, respondent decided that Kwock Jan Fat was not a citizen of the United States. The theory of the respondent is that Kwock Jan Fat is the son of a well known merchant of Oakland, California. This merchant was examined by respondent's representatives and denied that your petitioner was ever known to him.

(1) That because of the allegations herein set forth your petitioner believes that he has been de-

prived, without due process of law, of his citizenship which is considered by him to be an "inestimable heritage";

(2) That it is his belief that the United States District Court and the Appellate Court for the Ninth Circuit erred in sustaining the demurrer to his petition for writ of habeas corpus;

(3) That owing to being held at Angel Island incommunicado he was at a decided disadvantage in procuring evidence as to his place of nativity, and that secured by him under such difficulties was partly omitted from the record;

(4) That this case is of the greatest importance, not only to your petitioner, but to hundreds of American citizens now in China and who will eventually return to the United States via the port of San Francisco;

(5) That your petitioner is informed that the decisions rendered by the Appellate Court of the Ninth Circuit in this case is in conflict with other decisions in that circuit;

(6) That the questions herein contained have not been decided by this Honorable Court;

(7) That the decision of the United States Appellate Court gives powers to a Commissioner of Immigration that are repugnant to our Constitution and not conferred under our statutes.

Wherefore your petitioner prays that this Honorable Court assume jurisdiction of his case so

that the ends of justice may be met in this instance and deter like abuses in the future.

Dated, San Francisco,
February 25, 1919.

KWOCK JAN FAT,
Petitioner.

RALSTON & HOTT,
Attorneys for Petitioners.

DION R. HOLM,
Of Counsel.

State of California,
City and County of San Francisco.—ss.

Kwock Jan Fat, being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he knows the contents thereof; that the same is true of his own knowledge except as to those matters therein alleged on his information and belief and as to those matters believes them to be true. That the facts set forth in the foregoing petition are known to your affiant by being in attendance at certain proceedings in the case and by inspection of the record.

KWOCK JAN FAT.

Subscribed and sworn to before me this 25th day of February, 1919,

(Seal) JULIA W. CRUM,
Notary Public in and for the City and County of San Francisco, State of California.

CERTIFICATE OF COUNSEL.

We hereby certify that the foregoing petition for writ of certiorari is in judgment of counsel well founded and not interposed for delay.

Dated, San Francisco,
February 25, 1919.

RALSTON & HOTT,
Attorneys for Petitioners.

DION R. HOLM,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

The facts of this case are thought to be sufficiently set forth in the petition so will be here omitted.

There are two points in this case that we respectfully invite the Court's attention to, the first of which may be stated as follows:

Kwock Jan Fat caused three reputable white witnesses to travel from Monterey to Angel Island to testify in his behalf. The Immigration Authorities failed to transcribe all the testimony of these witnesses in as much as they did not record the fact that Kwock Jan Fat confronted these witnesses and recognized them. Material questions were asked by the examining inspector and answers were given by the witnesses and Kwock Jan Fat which were not recorded.

From the petition it is shown that one witness testified July 17th, 1917, and the other two the following day.

As is said in the opinion of the Appellate Court concerning the failure to transcribe the all important incident of recognitions between the petitioner and witnesses at (Record, p. 38):

> "an important circumstance and should properly have been noted in the record of the testimony."

This omission is more egregious than appears from the above quotation, as the petition shows material questions were asked by the Examining Inspector

and material answers were given by respondent and witnesses, none of which were recorded.

In re Can Pon et al., 168 Fed. 479,

A case decided by the District Court in the Northern District of California, it was held that the failure to record that a physical comparison had been made between the alleged father and an applicant was sufficient ground to grant a writ of habeas corpus.

In re Chooey De Ying, 214 Fed. 873,

Decided by the Appellate Court for the Ninth Circuit, held that the failure to record testimony offered by the Immigration Authorities which was favorable to an applicant rendered the hearing unfair.

The appeal taken from respondent's decision to the Secretary of Labor was abortive as the latter did not have all of the facts before him because of the omission to transcribe the testimony adduced by petitioners.

Rule 5, Sub. C of the Rules Governing the Admission of Chinese provides:

> * * * "the *complete* record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Secretary of Labor."

Petitioner was held incommunicado at the Immigration Station and while so held was required to produce testimony. This seems paradoxical but

such is the procedure. However, while so incarcerated petitioner produced an abundance of proof as to his status as a citizen. If the same attention is given to testimony that shall be offered by the hundreds of our citizens who will return to the United States via the port of San Francisco, as was given in this case, but few, if any, will gain admittance.

Immigration Inspector Wilkinson, acting for respondent, interviewed an unnamed witness at Monterey, who consulted with some other unnamed person, and gave evidence of his own and what the other unnamed person said all of which was prejudicial to the petitioner. The evidence was given with the understanding that the name of the witness was to be kept secret.

Inspector Wilkinson as appears at p. 39 Record, reported faithfully all that was said by the witness including the hearsay testimony. This was included in the record submitted to the Secretary of Labor. A request was made that the name of the witness and his informant be disclosed but the request was refused and after descision respondent wrote saying, * * * "no affidavit or other record of the testimony" (other than the lengthy report of Inspector Wilkinson) "of said witness was secured by reason of the witness' refusal to testify except upon the condition that the identity of said witness be not disclosed. It is therefore obvious that it is impossible to comply with

your demand." The letter then goes on to say the report did not influence respondent in making his decision.

Petitioner, by the act of respondent, was precluded from the rights of cross-examination and impeachment. Hearsay evidence was made part of the Record.

We do not think that it is necessary to quote authority to illustrate how such a proceeding is unfair and contrary to law.

The Appellate Court in its opinion states:

> "It is not true that the inspector's report contained nothing which was material to the issue. On the contrary, it was directly in point."

It is urged that this is not a case where the Commissioner of Immigration may have received an "anonymous communication", but it is one where an agent, the personal representative of the Commissioner, gathered, considered and filed anonymous and hearsay testimony which in turn was made part of the Record of the case and forwarded to the Secretary of Labor.

Dated, San Francisco,
February 25, 1919.

Respectfully submitted,

RALSTON & HOTT,
Attorneys for Petitioners.

DION R. HOLM,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this_____day of March, 1919.

_____

United States Attorney,

_____

Assistant United States Attorney,

Attorneys for Respondent.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

KWOCK JAN FAT AND TOM YING SHEE, Petitioners,
v.
EDWARD WHITE, COMMISSIONER OF Immigration.
} No. 901.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES IN OPPOSITION.

Petitioner, a Chinese alien, applied for and was denied admission into the United States by the immigration officials. The case was reopened and opportunity accorded alien to file additional evidence, but the original excluding decision was adhered to. Petitioner thereupon appealed to the Secretary of Labor, as was his right under the statute, but that official affirmed the excluding decision. Petitioner then filed a petition for a writ of habeas corpus, alleging unfair hearing by the immigration officials. A demurrer to the petition was sustained, but it is to be noted that in passing upon the demurrer the

court had before it a transcript of executive proceedings. (R. pp. 4, 14, 15.) Petitioner thereupon perfected an appeal to the Circuit Court of Appeals, which court, in an exhaustive opinion, affirmed the judgment below. He now seeks a further review on writ of certiorari, alleging as grounds justifying the issuance of the writ that (1) the immigration officers failed to transcribe all the testimony of the witnesses; and (2) the immigration officers considered an inspector's report alleged to contain testimony of a witness whose identity was not disclosed, and whose testimony petitioner was not permitted to see. It further appears, however, that the Commissioner of Immigration advised petitioner that no affidavit or record of the testimony of the witness was secured, and further that he, the commissioner, did not consider the report in reaching his conclusion. (R. 40.)

Neither of the above points raises any question of gravity or general importance, and therefore would not warrant the issuance of the writ. *Heike* v. *United States*, 227 U. S. 131, 144, and *Fields* v. *United States*, 205 U. S. 292, 296. Not only so, but the elements of a fair hearing by immigration officers in this class of cases have been clearly defined by this court in a long line of decisions thoroughly familiar to the court. The record will be searched in vain for evidence manifesting a conscious purpose on the part of the courts below to run counter to those decisions, or that they were not aware of the decisions. If they have misapplied the controlling principles to the facts of this case, the correction of the error, if

any, would only be of importance to petitioner, as said in substance in *Fields* v. *United States*, 205 U. S. 292, 296, in denying a writ of certiorari.

It is, however, insisted that no such misapplication has been made, or is shown.

ARGUMENT.

I.

It appears that the examining immigration inspector failed to record the fact of mutual recognition between petitioner and certain witnesses, but it is shown that the inspector thereafter wrote a letter setting forth the fact, which letter was incorporated in the record which was reviewed by the Secretary of Labor on appeal. No prejudice therefore resulted.

It is further alleged in general terms that the inspector also failed to record various questions and answers of certain witnesses, but the exact questions and answers are not given, although petitioner has himself interviewed the witnesses. However, as the two courts below had before them the transcript of all the testimony, and found petitioner's claim to be without merit, the time of this court ought not to be consumed in reviewing the point.

II.

The contention that petitioner was entitled to see the inspector's report for the purpose of seeing the testimony which it was alleged to contain and learning the identity of the undisclosed witness, is sufficiently answered by the Circuit Court of Appeals, viz, "it

should not be held that the mere receipt of an anonymous communication which is not made the basis of the commissioner's decision and does not influence it, renders the hearing unfair." (R. 41.)

III.

Two courts below have upheld the excluding decision of the immigration officials, and no sufficient reason appears for a further review. It is therefore respectfully submitted that the petition should be denied.

CLAUDE R. PORTER,
Assistant Attorney General.

MARCH, 1919.

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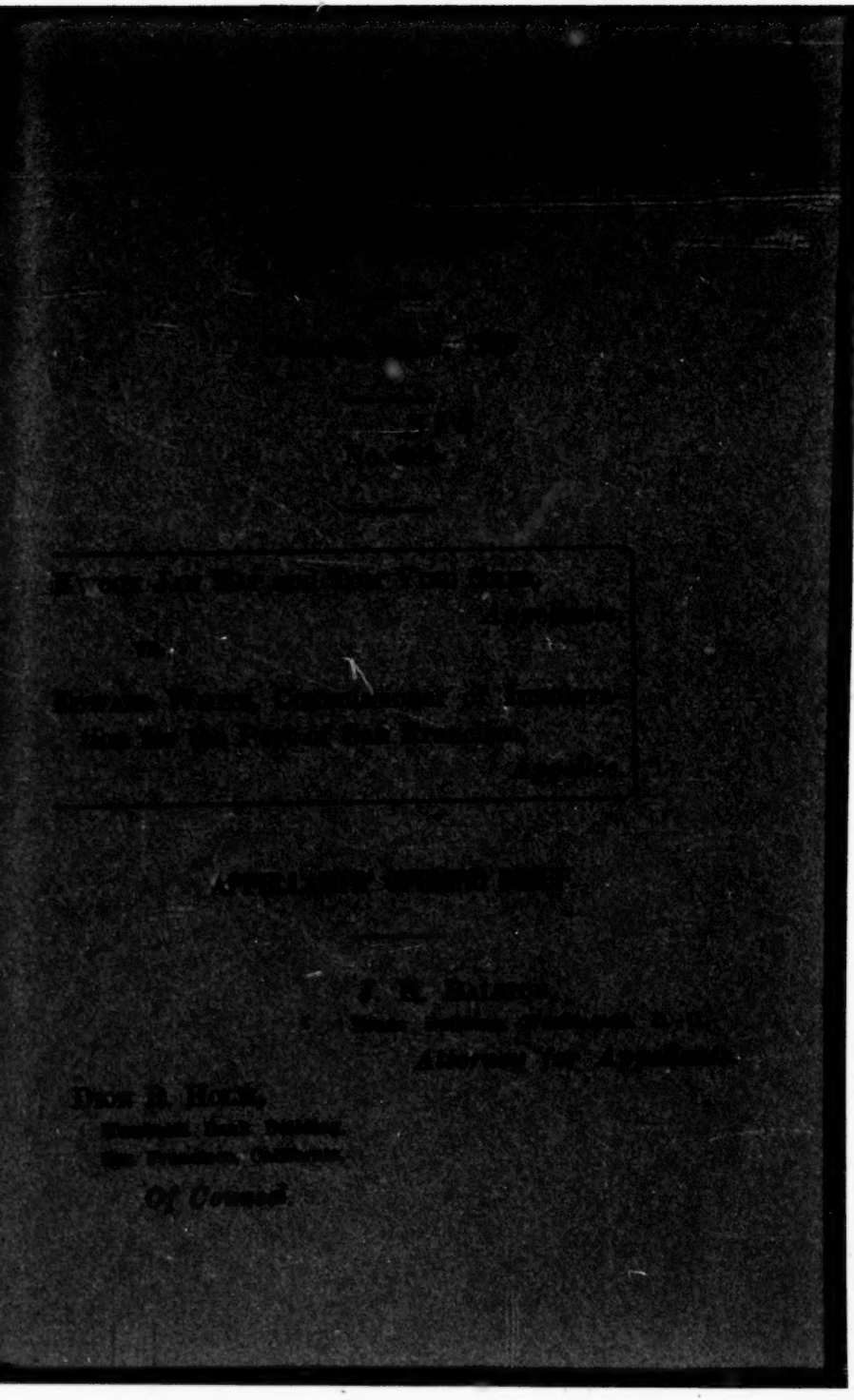

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1919

No. 901

KWOCK JAN FAT and TOM YING SHEE,
Appellants,

vs.

EDWARD WHITE, Commissioner of Immigration for the Port of San Francisco,
Appellee.

APPELLANTS' OPENING BRIEF.

Statement of the Case.

Kwock Jan Fat was born in Monterey County, California, somewhat over twenty-one years ago. Ah Tuck Lee was his father who was well known throughout Monterey County, as a native-born Chinese of Carmel, a settlement near Monterey.

In 1882 Ah Tuck Lee married Tom Ying Shee, a native of China, who arrived in the United States when eight years old. To Tom Ying Shee and Ah Tuck Lee five children were born, three girls and two boys. Kwock Jan Fat is the youngest member of the family.

Ah Tuck Lee died in Monterey in 1908.

In 1915 Kwock Jan Fat was desirous of making a trip to China and after an investigation was made by the United States immigration authorities, on February 1, 1915, the Commissioner of Immigration, at the Port of San Francisco, issued a form, known as No. 430, wherein Kwock Jan Fat was designated as a native citizen. This form was only issued after Kwock Jan Fat had assumed the burden of proof establishing to the entire satisfaction of the immigration authorities that he was in fact born in the United States.

A trip was made to China and on June 7, 1917, Kwock Jan Fat returned to the United States and presented the form 430, which was supposed to admit the holder on presentation, but on June 28, 1917, he was denied the right of admission by Edward White, appellee, acting as Commissioner of Immigration at the Port of San Francisco.

Under the rules governing the admission of Chinese, Kwock Jan Fat was granted ten days to produce any and all testimony he might have to prove he was a native. This testimony was to be produced while he was held strictly incommunicado at

Angel Island, the immigration station for the Port of San Francisco.

Within the time allowed affidavits were offered of Judge Ernest Michaelis, W. E. Parker, Manuel Ortins and Joseph Pugh, four old time residents of Monterey. The affidavits recited that affiants knew Kwock Jan Fat since infancy and knew him to have been born in Monterey, California.

Affidavits were also introduced of an elder brother, named Kwock Jan Sing, one by the mother Tom Ying Shee and one by an aunt Joe Ng Moy, who attended Tom Ying Shee at the birth of Kwock Jan Fat at Monterey.

The offering of affidavits is the approved method of introducing testimony in Chinese immigration cases.

Three of the white witnesses, heretofore named, journeyed from Monterey to Angel Island to testify, in behalf of Kwock Jan Fat, thereby losing at least two days of business, at great personal inconvenience and considerable expense.

On September 6, 1917, the appellee signed a final denial refusing Kwock Jan Fat the right to enter the United States. The denial was based on the finding "The claimed American citizenship is not established to my satisfaction".

An appeal from the Commissioner's decision was taken to the Secretary of Labor who sustained the Commissioner.

A petition for a writ of habeas corpus was filed by Tom Ying Shee, the mother, in the Southern Division of the United States District Court in and for the Northern District of California. A demurrer was interposed to this petition which was sustained by the United States District Judge. An appeal, from this order and from an order discharging an order to show cause why the writ should not be granted, was taken to the United States Circuit Court of Appeals for the Ninth Circuit. The Circuit Court affirmed the District Court and denied a rehearing.

A petition for a writ of certiorari was filed with this Honorable Court and on April 1, 1919, the petition was granted.

The points about to be brought to this Court's attention were set forth in the original petition and amendments to petition for a writ of habeas corpus (T. R. pp. 2 to 11) and included in the assignment of errors (T. R. pp. 19 to 21), which are as follows:

Specification of Errors.

I.

That the Court erred in denying the petition for a writ of habeas corpus.

II.

That the Court erred in sustaining the demurrer to the petition for a writ of habeas corpus.

III.

That the Court erred in discharging the order to show cause why a writ of habeas corpus should not issue.

IV.

That the Court erred in holding that the failure of the immigration authorities to record and transcribe all of the testimony offered on behalf of Kwock Jan Fat was not an unfair act on the part of the immigration officials at Angel Island, and that such failure to record the testimony did not constitute an unfair hearing.

V.

That the Court erred in holding that the Secretary of Labor on appeal did not act unfairly when he failed to order the immigration authorities at Angel Island to transcribe the testimony adduced, when the applicant was confronted by three white witnesses at Angel Island, in the presence of the Examining Inspector, who asked questions concerning the nativity of Kwock Jan Fat and the answers given by both Kwock Jan Fat and by the witnesses.

VI.

That the Court erred in finding that it was not error on the part of the Commissioner of Immigration at Angel Island, and the Secretary of Labor, at Washington, to withhold an affidavit and testimony referred to on pages 73a and 73b of the immigration record, also the witness' name from the applicant and the applicant's attorney.

VII.

That the Court erred in finding that it was not an unfair proceeding on the part of the Commissioner of Immigration at Angel Island, in disregarding the Form 430 heretofore issued to the applicant.

VIII.

That the Court erred in holding that the Commissioner of Immigration and the Secretary of Labor granted the applicant, Kwock Jan Fat a fair hearing and that he was not excluded from the United States without due process of law.

Argument.

The proceedings had before the Commissioner of Immigration were by order of Court (T. R. p. 15), made a part of the petition for a writ of habeas corpus and by stipulation (T. R. pp. 27 and 28), were transferred in their original form to the United States Circuit Court of Appeals and by order of that Court (T. R. p. 51), sent to this Court in their original form.

The proceedings before the immigration authorities are filed as part of the return to the writ of certiorari and designated Respondent's Exhibits "A" and "B". Exhibit "A" is numbered from pages 1 to 156 and is a transcript of the proceedings and evidence adduced in 1915, prior to Kwock Jan Fat leaving for China, and in which preinvestigation of

appellant, Kwock Jan Fat's status as a citizen was made and determined. Exhibit "B" comprises the proceedings had since Kwock Jan Fat returned from China. References will be made to Exhibit "B" and the parts referred to will be set forth in this brief *totidem verbis* or accurately epitomized.

The hearing accorded Kwock Jan Fat by the immigration authorities was unfair and he was deprived of his citizenship without due process of law by reason of

I.

KWOCK JAN FAT CAUSED THREE REPUTABLE WHITE WITNESSES TO TRAVEL FROM MONTEREY TO ANGEL ISLAND TO TESTIFY IN HIS BEHALF. THE IMMIGRATION AUTHORITIES FAILED TO TRANSCRIBE ALL THE TESTIMONY GIVEN BY THE WITNESSES INASMUCH AS THEY DID NOT RECORD THE FACT OF KWOCK JAN FAT BEING CONFRONTED WITH THE WITNESSES AND THAT MUTUAL RECOGNITION RESULTED. MATERIAL QUESTIONS WERE ASKED BY THE EXAMINING INSPECTOR AND ANSWERS WERE GIVEN BY THE WITNESSES AND KWOCK JAN FAT WHICH WERE NOT RECORDED.

On July 17, 1917, Joseph Andrew Pugh appeared at Angel Island to give testimony in behalf of Kwock Jan Fat. This testimony is transcribed at pp. 236 to 238 of Exhibit "B" where the witness testified that Kwock Jan Fat was born in Monterey, California, also going into details as to his family connections.

On July 18, 1917, Judge Ernest Michaelis and Manuel Ortins also testified giving substantially the

same facts as to place of birth as given by witness Pugh. The testimony, as far as pertinent to this case, showed Kwock Jan Fat to have been born in Monterey, California.

On July 17, 1917, at the close of witness Pugh's testimony, Kwock Jan Fat was brought before Mr. Pugh by the Immigration Inspector for the apparent purpose of finding out if the witness could identify Kwock Jan Fat and if the latter could identify the witness.

The fact of this meeting was left out of the transcript. The questions that naturally were asked by the Examining Inspector and the answers given by the witness and Kwock Jan Fat were also omitted.

On July 18, 1917, the day following the appearance of witness Pugh, witnesses Michaelis and Ortins went to Angel Island to testify.

At the end of the hearing given witness Michaelis, Kwock Jan Fat was led before the witness for the same purpose as he was before witness Pugh the day previous. The transcript of the proceeding is absolutely silent as to this occurrence or what was asked and said. (Exhibit "B" p. 232.)

On July 18, 1917, the third witness, Ortins, was questioned and again Kwock Jan Fat was brought forward with the result the same as with the witnesses Pugh and Michaelis. The record is silent as to recognition or what was said. (Exhibit "B" p. 235.)

On August 20, 1917, at Monterey the immigration authorities took statements of several witnesses, some of whom testified favorably to Kwock Jan Fat and others against him. On August 25, 1917, statements were taken at Oakland, California with the same result as in Monterey. These witnesses were produced by the immigration authorities.

On September 4, 1917, appellee signed a finding, which bears the dictation initials of Inspector W. H. Wilkinson who actually heard the greater portion of the case and determined it, * * * "the claimed American citizenship is not established to my satisfaction". (Exhibit "B" p. 189.)

After September 4, 1917, for the first time, the attorney for Kwock Jan Fat was permitted to see a part of the record of the proceedings. The attorney under the rules in effect was not allowed to be present at any of the hearings.

On inspecting the record the attorney found the failure to record all the testimony of the white witnesses and the fact of recognition, wrote to appellee September 12, 1917, as follows:

> * * * "While studying that portion of the record which your department permitted me to look at, I found that the testimony of the three white witnesses, to wit: E. Michaelis, J. Pugh and M. Ortins, sent to Angel Island at your request, was not fully reported. The witnesses above referred to told me they were confronted with the applicant Kwock Jan Fat and they recognized him and he recognized the witnesses. That the examining inspector was present at the meetings and asked applicant a number of questions which were answered. I call this

matter to your attention as it may have been an oversight of the official stenographer in not recording everything said and asked at the hearing of the case.

The witnesses further told me of meeting the applicant and recognizing him and as I considered this conclusive evidence I made special note of the fact. If there has been anything omitted kindly send me copies of all testimony given.

Yours respectfully,"

(Exhibit "B" p. 178.)

On September 14, 1917 the Acting Commissioner of Immigration signed a letter, dictated by Inspector W. H. Wilkinson, for and on behalf of appellee. The letter, as to the point under consideration was as follows:

* * * "With regard to the identification of the applicant by Messrs. Michaelis, Pugh and Ortins, you are advised that these witnesses were confronted with the applicant with the result that said witnesses immediately recognized and identified the applicant as the person whom they had known as Kwock Jan Fat, and the applicant was equally prompt in recognizing said witnesses. While I was advised of this incident and gave it full consideration in arriving at my decision, it was not made of record in connection with the statements taken from the witnesses. A copy of this letter will be placed with the record, however, and the fact that there was mutual recognition between said witnesses and the applicant will thus be available for the consideration of the Secretary on appeal.

Respectfully,

W. T. Boyce,

"WHW/ASH Acting Commissioner."

(Exhibit "B" p. 182.)

After the last quoted letter had been received an appeal was taken to the Secretary of Labor and an affidavit filed by Joseph Pugh, one of the witnesses whose testimony had not been completely transcribed, the concluding sentence of which is found in. (Exhibit "B" p. 173.)

> **"At the meeting between affiant and applicant both answered questions of the Examining Inspector."**

This affidavit was before the Secretary of Labor as well as the appellee yet neither sought to right the wrong done by ordering the testimony of the witnesses to be taken again.

Ordinarily Kwock Jan Fat would have been admitted to the United States on his return from China on presentation of his form 430, which is *prima facie* evidence of his status, but during his absence an anonymous letter was received by appellee stating appellant Kwock Jan Fat was not a citizen but the son of a merchant. Kwock Jan Fat was actually held incommunicado for over a month—from June 7, 1917, to July 9, 1917.

When arriving at the port of San Francisco, Kwock Jan Fat was refused admission, taken to Angel Island and held there incommunicado. He arrived June 6, 1917 and on June 9, 1917, was brought before an inspector and questioned. The procedure did not permit that an attorney or friend be present at the hearing.

On June 22, 1917 (Exhibit "B", pp. 277 to 279) shows that a white witness was questioned at Angel

Island. This witness a Mrs. L. E. Agard was supposed to testify that Kwock Jan Fat was a person named Suey Chong. At a certain point in the testimony the following appears (Exhibit "B", p. 277):

> "(Applicant brought in)
> Q. (To the applicant). Do you know this lady? A. No.
> Q. (By the witness Mrs. Agard). Don't you know me Raymond? (No answer).
> Q. (By the Inspector). What is your name? A. My name is Kwock Jan Fat.
> * * * (applicant removed)."

The witness then testified she would not swear that the boy she saw was the one the immigration authorities thought him to be.

Later during this hearing the applicant was again brought in and a notation was duly entered in the record.

But when the witnesses of Kwock Jan Fat were testifying no such attention was paid to what was said or done. The record is silent and it does not appear he was ever brought in nor what was said.

Rule 5, Sub. c of the Rules Governing the Admission of Chinese provides,

> * * * "the *complete record* of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Secretary of Labor".

The Secretary of Labor, by the omissions of appellee, did not have the complete record. The

lower Courts did not have the complete record, nor has this Court.

If the omission had taken place with but one witness it would not be so serious but to have it occur with three witnesses and on different days it is highly unfair, prejudicial to Kwock Jan Fat's rights and rendered his appeal to the Secretary of Labor abortive.

II.

IMMIGRATION INSPECTOR W. H. WILKINSON, ACTING FOR APPELLEE INTERVIEWED AN UNNAMED WITNESS AT MONTEREY. THIS WITNESS CONSULTED SOME OTHER UNNAMED PERSON. THE FIRST UNNAMED WITNESS GAVE EVIDENCE OF HIS OWN, AND WHAT THE OTHER UNNAMED PERSON SAID, ALL OF WHICH WAS PREJUDICIAL TO KWOCK JAN FAT. THE EVIDENCE WAS GIVEN WITH THE UNDERSTANDING THAT THE NAME OF THE WITNESS WAS TO BE KEPT SECRET.

The simplest method of illustrating the above proposition is to quote the report of Inspector W. H. Wilkinson. This report is to be found in Exhibit "B", pp. 220 to 222.

On the margin of the report at p. 220 we find where appellee had approved the report in the following language (Exhibit "B", p. 220):

"August 8—1917
approved
Edward White
Commissioner"

The words in italics have been so set forth by counsel for the sake of emphasis. The complete report is here transcribed (Exhibit "B", pp. 220 to 222):

"U. S. DEPARTMENT OF LABOR
IMMIGRATION SERVICE

In Answering Refer to
No. 16243/6-17

Office of the Commissioner
Angel Island Station
via Ferry Post Office
San Francisco, Cal.
August 8, 1917.

Commissioner of Immigration,
Angel Island, Cal.

Pursuant to instructions I proceeded on the 4th instant to Monterey, California, for further investigation of the case of Kwock Jan Fat, an applicant for admission at this port as an alleged native (Form 430) ex SS 'Siberia' June 7, 1917.

It was my purpose to reach a line of witnesses not heretofore connected in any way with the case, and after much inquiry, I located a resident of Monterey who, in turn, referred me to another person whose close association with the Chinese of that City, and whose long residence therein had qualified that person to give authentic information in the premises. The circumstances, in my opinion, justified the request that the identity of this witness be not disclosed, and although I made every endeavor *to procure an affidavit, it was only upon my assurance that such identity would be kept secret, that the desired information was given.* This witness was intimately associated with the inhabitants of Chinatown of Pacific Grove, especially during the year 1902, and had occasion to visit the home of the applicant's alleged mother almost nightly dur-

ing that year; under which circumstances said witness was in a position to have absolute knowledge as to the number and identity of the members of that family. While the witness was well acquainted with the applicant's three alleged sisters, and knew their names and present whereabouts, it was stated most positively by the witness that there were no boys born to Tom Shee—applicant's alleged mother. Said witness was unable to identify the photograph of either Lew Suey Chong (the boy who was admitted at this port as the son of a merchant in 1909) or the photograph of the applicant (as it appears on his return certificate or in the group photographs of the Oakland class) as any one whom the witness had ever seen. As the applicant would have been about six years of age during the year of this witness's activity (1902) the above failure to recognize his photograph is very significant.

After my first interview—on the 4th instant—*this witness made inquiry of an old Chinese resident of Pacific Grove and Monterey, concerning the sons of Tuck Lee (applicant's alleged father), whereupon said Chinese stated* that Tuck Lee had no sons and that the witness should have nothing to do with the case, and should sign no affidavits in their behalf as such action would involve the witness in trouble. I was unable to ascertain the name of this Chinese person on my second interview—on the fifth instant—and ascertained that he had left the City that morning. My informant advised me that the applicant's three alleged sisters also stated—some years ago—that they had no brothers.

The above-mentioned witness was thoroughly conversant with the history of this family and advised me concerning the daughter Kwock Ah Oy, whose whereabouts is now unknown. I

was advised that Kwock Ah Oy had an illegitimate child by one Low Sam, and that she and the child were brought to Oakland and placed in the Beulah Salvation Army Rescue Home. I was also informed that there was considerable enmity between Ah Oy and her mother, and that they were not on speaking terms, in view of which fact I deemed it important to locate this daughter in the belief that she would give correct information in this case; but my efforts so to do were unsuccessful, as Miss Tanner—the present head of the Salvation Army Rescue Home—was absent on the occasion of my visit and I was therefore unable to locate the records by which to verify this Chinese woman's admission to said home. While there, however, I was put in touch with Miss Banks (who was mentioned by my informant in Monterey as well as by the applicant, as a teacher and Salvation Army worker among the Chinese in Pacific Grove), and a visit to this lady confirmed this latter information, to the extent that she was an assistant to her sister—known as 'Captain' Banks—in the latter's work among the Chinese of the above mentioned city. Lack of time, and the fact that I found Miss Banks just leaving her home and interviewed her on the street, made it impossible for me to complete my interview and procure her statement in the form of an affidavit or by question and answer and I therefore recommend that an Inspector be assigned to the task of visiting both 'Captain' Banks and her sister with a view to securing affidavits concerning their former activities in Pacific Grove and the extent of their knowledge concerning the children of Tuck Lee. The Miss Banks with whom I conversed having disclaimed any knowledge of any boys born to the wife of Tuck Lee, I believe that her testimony and that of her sister will be found to confirm the in-

formation which I secured in Monterey. The addresses of these Misses Banks, are 1226 Tenth Avenue and 953 East Eleventh Street, Oakland, California.

This case was first assigned to me for the taking of statements from three white witnesses who appeared at this station from Monterey, and I did not then have occasion to review the entire record. Having carefully reviewed said record before writing this report I discovered that the Investigating Officer (Inspector Thiess) had failed to make any effort to locate the departing record of one of the applicant's alleged sisters; and I have since procured such record, together with those of her husband and child, all of whom departed for China in August, 1906, without investigation and on affidavits executed in Monterey and subscribed to by a number of citizens of that place. It is most unfortunate that these affidavits were not discovered before my recent visit to that city, as it is obvious that they would have opened up an entirely new line of investigation. I had refrained from attempting to secure new witnesses, while there, because of the statement of my informant that the old Chinatown (wherein applicant had lived) was entirely isolated from the section occupied by the white residents, that the only white persons frequenting the Chinese quarters were young men who surreptitiously entered that quarter for unlawful purposes, and that it would be difficult to secure their statement because any information given concerning that Chinatown would incriminate and embarrass them. For this reason my informant refused to disclose their names, as I was informed that such a disclosure would involve many of the most respectable citizens of Monterey. These newly discovered affidavits, however, offer an opportunity for an investigation which was not open to me; and as I am

informed that there are some new cases in the vicinity of Monterey in which investigations will have to be conducted, I recommend that this case be assigned to the Inspector delegated to visit Monterey on those cases, with instructions to interview the persons named in said affidavits.

Tuck Lee and Tom Shee (alleged parents of the applicant), I am informed, are of a very low class of Chinese, while the applicant appears to be very intelligent and of a class higher than the ordinary applicant for admission at this port. This fact is referred to as an interesting one for the reason that *my informant in Monterey stated that the Chinaman* (previously referred to as the one who gave information as to the fraudulent nature of this case) had stated that Tuck Lee, not having any boys, had bought one in China shortly after the earthquake, and that said boy was of a much higher class than Tuck Lee and his wife. *This story tends to confirm my belief* that the applicant is in fact the Lew Suey Chong who was admitted in *1909* as the son of a merchant of Oakland, it being obvious that Tuck Lee (a fisherman and laborer) could not bring in the boy himself.

(Sgd.) W. H. Wilkinson
Immigrant Inspector."

WHW/ASG

When the transcript, of the immigration proceedings, was open for inspection the following was found (Exhibit "B" p. 184):

"16243 9/6/17

6-17
Should attys review entire additional record pages 26 to 105?

E. W.
9/6/17

With exception of following pages:
64, 65, 71 to 73 and 101
W. H. Wilkinson."

An excerpt from Inspector Wilkinson's report formerly was known in Exhibit "B" as pages 73a and 73b. The entire report was numbered in Exhibit "B" pp. 71-72 and 73.

However the *excerpt* from the report was read by the attorney for Kwock Jan Fat and the following letter was sent to appellee (Exhibit "B" p. 178):

"San Francisco, Cal.
September 12, 1917.

"Edward White, Esq.,
Commissioner of Immigration,
Angel Island, Cal.

Dear Sir: In re *Kwock Jan Fat,* 16243/6-17 Native, ex S. S. "Siberia Maru", June 7, 1917.

I have this day filed my notice of appeal to the Secretary of Labor from your decision in this case.

While examining that portion of the record which your Department saw fit to permit me to investigate, I found on page 73a and 73b a notation by Inspector Wilkinson in which he said a certain person had given an affidavit concerning the facts in this case and that the witness had given the testimony with the distinct understanding that his name should not be disclosed nor the substance of his testimony. As attorney for Kwock Jan Fat I respectfully demand the right to see this affidavit, study it carefully with the idea, if I think it necessary, of putting in counter affidavits in support of the appeal. I ask that I be given a copy of this testimony or at least the right to see the same for the further purpose of determining how far this affidavit controlled you in making your findings.

I expect to submit additional evidence in support of this appeal but will refrain from offering any until you have permitted me to see this testimony or until you deny this request and I ask that my time to present evi-

dence in support of the appeal to the Hon. Secretary of Labor, be extended until you have acted upon this matter. * * *"

A reply to this letter was made September 14, 1917, which was signed, not by appellee but by the acting Commissioner of Immigration and which was not dictated by appellee but bore the dictation initials of Inspector Wilkinson, the person who made the objectionable report. The letter, in part, is here produced (Exhibit "B" pp. 180 and 181):

"Office of the Commissioner
Angel Island Station
Via Ferry Post Office
San Francisco, Cal.
September 14, 1917.

Mr. Dion R. Holm,
Attorney-at Law,
Chronicle Building,
San Francisco, Cal.

Sir:

Receipt is hereby acknowledged of your letter of the 12th instant, in re Kwock Jan Fat, an applicant for admission at this port as a native born American (form 430) ex SS "Siberia Maru" June 7, 1917. Replying to your demand for the right to inspect the affidavit of the unnamed witness interviewed by Inspector Wilkinson in Monterey, Cal., on August 4th and 5th, 1917, you are advised *that the memorandum report of that officer*, dated the 8th ultimo (pp. 73a and 73b) specifically states that *no affidavit or other record of the testimony of said witness was secured by reason of the witness' refusal to testify except upon the condition that the identity of said witness be not disclosed.* It is therefore obvious that it is impossible to comply with your demand. You are further informed, in this connection, that

there has been no evidence considered by me in arriving at my decision in this case which you have not been permitted to inspect; *and that that portion of Inspector Wilkinson's report which was withheld from you contained no evidence whatsoever and nothing which was material to the issue in this case.* As a matter of fact this Inspector's report in no way influenced my decision, and was useful only in locating other material witnesses whose testimony appears of record. * * *

Respectfully
W. T. Boyce,
WHW/ASH Acting Commissioner."

The United States Circuit Court of Appeals in its decision held that it was not true that Inspector Wilkinson's report contained nothing which was material to the issue. A reading of the report will convince this Court it is very material to the case.

The procedure in force at Angel Island makes it impossible for the Commissioner of Immigration to actually pass on each and every case arriving at the station nor is the slightest criticism aimed at or intended for the Commissioner for not doing so. It was however unfair of appellee to delegate his delegated powers to Inspector Wilkinson when objections were made to the latter's manifestly unfair conduct in taking a statement from a witness, whose identity was to be kept secret and in permitting this witness to inquire from some other unknown person and give the result of the inquiry. Hearsay testimony was thus introduced and made a part of the record and the right of offering rebuttal testimony to the two witnesses was denied appellants.

Inspector Wilkinson also prepared the finding dated September 4th, 1917, wherein it is stated the "claimed American citizenship is not established to my satisfaction" which finding was signed by the appellee.

If appellee wanted to act fairly in the premises after knowing that the report of Inspector Wilkinson existed he should have ordered the report stricken from the records. Yet this was not done and the report in due time was forwarded to the Secretary of Labor for his consideration.

The appellee aslo committed a grievous error and acted prejudicially to Kwock Jan Fat's interests when the actual deciding of the case was given into the hands of Inspector Wilkinson who had prepared the report referred to.

Another instance of the unfairness of appellee is also shown from the record of the case where there was on file the affidavits of the mother, brother, aunt and a fourth white witness in not ordering that the testimony of these persons be taken on one of the two trips made by the appellee's representatives to Monterey. Instead of taking this testimony the witnesses were studiously avoided.

III.

THE UNITED STATES DISTRICT COURT ERRED IN SUSTAINING APPELLEE'S DEMURRER TO THE PETITION AND AMENDMENT TO PETITION FOR A WRIT OF HABEAS CORPUS.

The transcript of record pp. 13 and 14 shows that the grounds of demurrer were that the petition did not state facts sufficient to entitle petitioner to the issuance of a writ and that the statements in the petition relative to the record of the testimony taken on the trial of the said applicant are conclusions of law and not statements of the ultimate facts.

On p. 15 of the transcript of record a copy of the minutes of the Court show that the attorney for appellee upon presenting the demurrer to the petition also presented the immigration records which were filed and marked Respondent's Exhibits "A" and "B" and which were to be considered as part of the original petition for the writ.

Here we have confronting us the unique position of appellee objecting to his own record.

The order of the Court should have been that a return to the petition for the writ of habeas corpus should be made as a reading of the petition and amendments thereto, as set forth on pp. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of the transcript of record, shows several questions of fact raised by the petition which of necessity could only have been determined after a return had been filed.

The following authorities are submitted to illustrate that a fair hearing must be granted by the immigration authorities:

Chin Yow v. United States, 208 U. S. 8;
Zakonite v. Wolf, 226 U. S. 272;
Low Woh Luey v. Backus, 225 U. S. 461;
Interstate Commerce Com. v. Louisville and Nashville Railroad Company, 227 U. S. 88 at p. 91;
Tang Tun v. Edsell, 223 U. S. 673.

The four last cited authorities, while holding the hearings accorded in the particular cases were fair, yet all are predicated upon the proposition that:

> "Administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the indisputable character of the evidence."

A case decided in the District where this action originated is at least persuasive authority for the second point urged. The case is

Chew Hoy Quong v. White, 249 Fed. 869.

The reasoning in the following two cases is worthy of note.

In re Can Pon et al., 168 Fed. 479;
In re Chooey De Ying, 214 Fed. 873.

In the Can Pon case it was held the failure to record that a physical comparison had been made between the applicant and his father constituted an unfair hearing.

In the Chooey De Ying case an unfair hearing was held to exist where the immigration authorities failed to record testimony favorable to the applicant.

Rule 5, subdivisions A, B and C of the Rules Governing the Admission of Chinese is as follows:

> "Rule 5. (a) If upon the conclusion of the hearing the Chinese applicant is adjudged to be inadmissible, he shall be advised of his right to appeal to the Secretary of Labor by a notice in the Chinese language. If the rejected applicant elects to appeal, written notice thereof must be served on the officer in charge within five days, exclusive of Sundays and legal holidays, after rejection.
>
> (b) Applicant's counsel shall be permitted, after notice of appeal has been duly filed, to examine the record upon which the excluding decision is based, and may be loaned a copy of the transcript of testimony contained therein. If there is a consular officer of China at the port where examination is held, he also shall be notified in writing that the said Chinese applicant has been refused a landing, and shall be permitted to examine the record. The word "record" as used in this paragraph shall not be construed to include memoranda of comment or letters of transmittal unless they contain evidence additional to that in the record proper.
>
> (c) The notice of appeal shall act as a stay upon the disposal of the applicant until a final decision is rendered by the Secretary of Labor; and, within ten days after the excluding decision is rendered, unless further delay is required to investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith,

shall be forwarded to the Secretary of Labor by the officer in charge at the port of arrival, accompanied by his views thereon in writing. If, on appeal, evidence in addition to that brought out at the hearing is submitted, it shall be made the subject of prompt investigation by the officer in charge and be accompanied by his report."

It is respectfully urged that by failing to record all the testimony of the witnesses produced, by not taking the testimony of witnesses who appeared by affidavit, by considering hearsay testimony, by refusing to disclose the identity of a witness and depriving the appellants the right to give rebuttal testimony to this witness and by withholding the greater part of this witness' testimony from appellants, appellee acted in an unfair manner and the hearing accorded Kwock Jan Fat was inadequate and manifestly unfair.

Dated, San Francisco,
March 3, 1920.

Respectfully submitted,

J. H. RALSTON,
Attorney for Appellants.

DION R. HOLM,
Of Counsel.

Due service and receipt of a copy of the within is hereby admitted

this_____day of March, 1920.

_____

United States Attorney,

_____

Assistant United States Attorney,

_____

Attorney General of the United States,

_____

Assistant Attorney General of the United States,
Attorneys for Appellee.

In the Supreme Court of the United States.

OCTOBER TERM, 1919.

KWOCK JAN FAT, PETITIONER,
v.
EDWARD WHITE, COMMISSIONER OF IMMIGRATION. } No. 313.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE RESPONDENT.

STATEMENT.

Petitioner, a Chinese person, made application to enter the United States as a citizen thereof by birth. He failed to establish his claimed right of entry to the satisfaction of the immigration officials, and they ordered his exclusion. He thereupon appealed to the Secretary of Labor, who affirmed the excluding decision. Petitioner then filed a petition for a writ of habeas corpus, alleging unfair hearing on the part of the immigration officials. (R., pp. 2 et seq.) A demurrer to the petition was filed, and at the same time a transcript of the immigration record was also presented, which was to be considered a part of

the "original petition." (R., p. 14 and 15.) After argument the demurrer was sustained. (R., p. 15.) Petitioner thereupon perfected an appeal to the Circuit Court of Appeals, which court, in a carefully reasoned opinion, affirmed the judgment below. (255 Fed. 323.) The case is now before this court on writ of certiorari granted at the last term.

GROUNDS OF ALLEGED UNFAIR HEARING.

Two grounds of alleged unfair hearing are relied upon by petitioner: (1) Failure of the immigration authorities to record all the testimony of certain specified witnesses; and (2) alleged withholding from petitioner of a claimed affidavit and testimony.

ANALYSIS OF OPINION OF CIRCUIT COURT OF APPEALS UPON BOTH POINTS.

1. With respect to the first point, supra, the Circuit Court of Appeals held that this error was cured by the action of the immigration officials in appending to the record a subsequent statement fully and fairly setting forth that petitioner and the witnesses now specified by him mutually recognized one another when brought face to face.

2. With respect to the second point, supra, that court held that as the report played no part in the conclusion reached by the immigration officials, the withholding of that report could not constitute an unfair hearing. (R., pp. 37 et seq.)

ARGUMENT.

I.

CLAIMED FAILURE TO RECORD ALL TESTIMONY RESTS UPON NO SUBSTANTIAL FOUNDATION.

While a demurrer was filed to the petition for a writ of habeas corpus in this case, such demurrer only admits those allegations shown to be well pleaded in the light of the accompanying exhibits—viz, the transcript of the proceedings before the immigration officials. (*Low Wah Suey* v. *Backus*, 225 U. S. 460, 469, 472.) We come, then, to examine the record of the immigration proceedings for the purpose of testing the accuracy of the petition allegation that certain testimony of named witnesses was omitted—viz, (1) the fact of mutual recognition; and (2) questions asked and answers given at the same time relative to petitioner's "place of birth, parentage, and acquaintance with each witness." (R., p. 10.)

1. The fact of mutual recognition between petitioner and certain named witnesses, while not originally recorded as a part of the original record, was given full consideration by the immigration officials, and a detailed written statement covering the point was placed with the record forwarded to the Secretary for his use in considering the executive appeal of petitioner. In addition to the copy of the letter written to counsel, which is set forth at page 10 of his brief, and also appears at page 182 of Exhibit B, the immigration officials incorporated in the record

forwarded to the Secretary the following statement (Exhibit B, p. 126):

> In this connection I have to state that the only questions pertaining to said witnesses which did not appear of record was the single inquiry as to whether or not they were actually acquainted and recognized each other. Their prompt recognition was reported to me prior to entry of decision and was considered at the time action was taken. It is also set forth in my letter to the attorney, under date of September 14 last. (P. 126, Exhibit B.)

It is plain, therefore, that the failure to have the original record show mutual recognition between petitioner and the witnesses mentioned was cured by the subsequent insertion of that fact in the record prior to its transmission to the Secretary, and the statement of the immigration officials that in reaching their decision they had given consideration to that item of evidence. In this respect clearly no proper claim of unfair hearing can be successfully urged. Certainly this court will not hold that an alien has been accorded an unfair hearing because of the failure to record testimony which was actually received and considered, when the omission has been fully corrected and supplied prior to the taking of final action by the immigration authorities.

2. It is also contended that the immigration officers failed to record questions asked of and answers given by these three white witnesses and petitioner at the time of their recognition of one another, above mentioned.

Tested by the immigration record, now before this court as Exhibit B, this contention is devoid of merit. That record contains the recorded testimony of these three white witnesses going minutely into their acquaintance with petitioner, and their knowledge of his parentage and birth in this country, so that it is inconceivable that, when the witnesses were confronted with petitioner, the examining inspector would have again gone over the ground of their previous testimony. The confrontation was merely for the purpose of ascertaining whether the witnesses recognized petitioner and petitioner recognized the witnesses. The fact of recognition is affirmatively and fully shown by the immigration record, as it was finally forwarded to the Secretary on appeal, and the specific questions and answers which established the recognition could not in any wise strengthen the fact of recognition. This is definitely shown by the statement of the immigration officer in his letter to the Department of Labor transmitting the record, that the only question not recorded was the single inquiry "as to whether or not they were actually acquainted and recognized each other." (Exhibit B, p. 165.)

As further demonstrating the lack of merit of petitioner's present contention, the record discloses that his counsel examined the record on September 4, 1917; on September 12, 1917, called attention of the immigration officers to the omission from record of fact of mutual recognition; and thereafter filed with the immigration officials affidavits of each of

these three white witnesses executed as late as September 14, 1917, in two of which the mere fact of recognition is affirmed, no reference whatever being made to any such questions and answers as it is now contended were omitted from the record. (Exhibit B, p. 168 et seq.) In the third affidavit, in addition to affirming the fact of recognition, appears this indefinite closing statement (Exhibit B, p. 173):

> At the meeting between affiant and applicant both answered questions of the examining inspector.

Unless reflection is to be cast upon counsel then acting for petitioner, it must be here assumed, in harmony with the disclosures of the record as hereinbefore pointed out, that the questions and answers related solely to the fact of recognition. Had counsel regarded the questions and answers as having any bearing beyond establishing the fact of recognition, it is reasonable to suppose that counsel would have had the above affidavits cover the matter in some specific way.

3. Finally it must be remembered that these executive hearings are conducted in a summary manner, and it would destroy the effectiveness and the purpose of such hearings if omission to record a fact or facts considered, which record is subsequently supplied as in the case at bar, could be made the basis of securing a judicial hearing on habeas corpus. (*Ex parte Wong Yee Toon*, 227 Fed. 247, 249, 250; *In re Jem Yuen*, 188 Fed. 350, 353, 354.)

4. It follows that the rather contradictory allegation in the petition for writ of habeas corpus here (R., p. 10), when tested by the immigration record, is not well pleaded, and the action of the trial court in so treating it is unassailable.

II.

THE CONTENTION THAT AN AFFIDAVIT TAKEN FROM AN UNIDENTIFIED WITNESS WAS WITHHELD FROM PETITIONER NOT SUPPORTED BY IMMIGRATION RECORD.

1. Petitioner next urges, as a further ground of unfair hearing, that the immigration inspector obtained an affidavit from an undisclosed witness, and that upon application he (petitioner) was refused the privilege of examining such affidavit. This contention is based upon certain ambiguous statements in a report made to the Commissioner of Immigration by the inspector. (Exhibit B, p. 220.) Whatever interpretation the language of the report may suggest to one reading it, the record plainly discloses that no such affidavit was obtained, and positive information to this effect was conveyed to petitioner by the immigration officials (Exhibit B, p. 180) and to the authorities in Washington when the record on appeal was forwarded. (Exhibit B, p. 165.) The record correspondence on the point is also set out at pages 14, 19, and 20 of petitioner's present brief. In the light of these facts it is clear that the attempt to interpret the language of the inspector's report as showing that he obtained an affidavit must fail.

2. Emphasis is laid by petitioner upon a notation he found in the immigration record to the effect that counsel should not be permitted to see the report of the inspector which it is claimed, but without any basis, shows that an affidavit was secured. In view of the statement that the inspector's report was used merely for the purpose of locating witnesses, and was not considered as constituting evidence, the withholding of the report could not constitute prejudicial error. (Exhibit B, pp. 180 and 181.) But it is conceded that counsel examined much of the report. (Exhibit B, p. 178.) Moreover, it can hardly be contended that petitioner, in a hearing by the immigration officials, is entitled to see all the official reports of the inspectors; and even though, as petitioner contends, it should have been withdrawn from the record, if not to be considered as evidence, its retention merely made out a case of incompetent evidence. In this aspect the ruling of the court in *Ex parte Pouliat*, 196 Fed. 437, 442, is entitled to weight. The court said:

> The claim that the petitioners were not accorded a full and fair hearing before the executive officers is based upon the fact that the inspector took certain affidavits ex parte, and in the absence of the petitioners, and reported certain facts, communicated to him by third persons, to the department. There is no denial of the fact that the petitioners were given a full and fair opportunity to be heard, and that all testimony offered in their behalf was received. What amounts to such a full

> and fair hearing as the law contemplates has never been defined by the courts. Perhaps the practice of submitting ex parte affidavits and of reporting independent facts is not to be commended; but the mere fact that such a report has been made, or such affidavits transmitted, will not entitle an alien to a release on habeas corpus, unless it appears that he has, or may have been, prejudiced thereby. No such prejudice can be predicated on the acts of the inspector in this case. The ex parte affidavits taken and the ex parte statements made simply tend to confirm facts which appear in the testimony of the petitioners themselves, and could not change the result. Were I to exclude all incompetent testimony and determine the case de novo on the competent testimony alone, I could not reach a different conclusion.

The above view appears to be in harmony with that expressed by this court in *Low Wah Suey* v. *Backus*, 225 U. S. 460, 471. This court said:

> It is further alleged that the executive officer acted in bad faith and arbitrarily in receiving a report based on hearsay information, the name of the informer being withheld from Li A. Sim, and no opportunity being given her to offset or disprove such hearsay evidence. The nature and character of this testimony is not set forth, and we have no means of knowing it was not such as might properly have been considered in such a hearing.

See also *Tang Tun* v. *Edsell*, 223 U. S. 673, 677–679.

The principle applicable here, conceding arguendo that the report was incompetent, is that applied in cases tried to the court without a jury. The rule is thus stated in *Streeter* v. *Sanitary District*, 133 Fed. 124, 131:

> It should, however, be borne in mind that, on a trial to the court without a jury, the improper admission or rejection of evidence is not of itself necessarily a ground for reversal. (*Craig* v. *Missouri*, 4 Pet. 427, 7 L. Ed. 903; *Field* v. *United States*, 9 Pet. 202, 9 L. Ed. 94; *United States* v. *King*, 7 How. 853, 854, 12 L. Ed. 934; *Weems* v. *George*, 13 How. 190, 14 L. Ed. 108.) The evidence improperly admitted or improperly rejected must be of such kind and so forceful that it should work a different result from that arrived at by the trial court.

As it is distinctly stated that the report of the inspector in the case at bar was not considered, its presence in the record, even if incompetent, can not constitute prejudicial error in view of the other plainly competent evidence. Stated differently, eliminate the report, and still no ground for reversing the judgment of the immigration officials can be established.

3. A further effort is made by petitioner to show that the inspector who investigated the case also rendered the excluding decision, and that this made the hearing unfair. This contention is worked out by showing that the initials of the inspector appear upon the various correspondence and other related papers in the case. The mere fact that the findings and other papers were prepared by the inspector does

not make the decision any the less that of the commissioner, for the findings and papers are so signed. In this aspect the point is ruled against petitioner by *Tang Tun* v. *Edsell*, 223 U. S. 673, 682.

III.

It is respectfully submitted that petitioner has been accorded every opportunity to submit all the evidence he desired. His case has received the careful consideration of the immigration officials, and the claims of unfair hearing are not well founded. (*Ex parte Garcia*, 205 Fed. 53, and cases therein cited.)

The judgment below should be affirmed.

ROBERT P. STEWART,
Assistant Attorney General.
HARRY S. RIDGELY,
Attorney.

APRIL, 1920.

O